

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: EQUIFAX, INC., CUSTOMER)
DATA SECURITY BREACH LITIGATION)
)

Case Number
1:17-md-2800-TWT

Transcript of a motion hearing
before the Honorable Thomas W. Thrash, Jr., Chief Judge
July 22, 2019; 11:02 a.m.
Atlanta, Georgia

(Appearances on page two)

Proceedings recorded by mechanical stenography,
transcript produced by computer.

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16 David Balser
17 Phyllis Sumner
18 Elizabeth Adler
19 Robert Griest
20 Michelle Kisloff
21 Edith Ramirez (phone)
22
23
24
25

P R O C E E D I N G S

(Call to the order of the Court.)

THE COURT: Well, based on what happened in this case last week, it looks like the best way for me to handle my cases is simply to leave town, spend a week fishing in Colorado and New Mexico, come back and everything's just resolved.

(Courtroom laughter.)

THE COURT: All right. This is a hearing on the request to preliminarily approve the proposed class action settlement and the Plaintiffs' motion to direct notice of the settlement to the class.

First, let me ask counsel for the parties who expect to participate in this hearing to identify yourselves for the record and the parties you represent.

MR. CANFIELD: Good morning, Your Honor. Ken Canfield, co-lead counsel for the Consumer Plaintiffs.

THE COURT: Good morning, Mr. Canfield.

MS. KELLER: Good morning, Your Honor. Amy Keller, also co-lead counsel for the Consumer Plaintiffs.

THE COURT: Good morning, Ms. Keller.

MR. SIEGEL: And good morning, Your Honor. Also co-lead counsel, Norm Siegel for the Consumer Plaintiffs.

THE COURT: Good morning, Mr. Siegel.

GOVERNOR BARNES: Roy Barnes for the Plaintiffs.

1 THE COURT: Good morning, Mr. Barnes.

2 MR. DESAI: Your Honor, this is Akash Desai for the
3 United States. We are local counsel for the Bureau of
4 Consumer Financial Protection, who have filed an action this
5 morning and a proposed stipulated order.

6 Also participating by telephone for the bureau are
7 enforcement attorneys Jenelle Dennis, Richa Dasgupta, Solange
8 Hilfinger-Pardo, and Emily Mintz Sachs.

9 THE COURT: Good morning, Mr. Desai.

10 MR. BALSER: Good morning, Your Honor. David
11 Balser, King and Spalding, on behalf of Equifax.

12 THE COURT: Good morning, Mr. Balser.

13 MS. SUMNER: Good morning, Your Honor. Phyllis
14 Sumner on behalf of Equifax.

15 THE COURT: Good morning, Ms. Sumner.

16 MS. KISLOFF: Good morning, Your Honor. Michelle
17 Kisloff of Hogan Lovells, on behalf of Equifax.

18 THE COURT: Good morning.

19 All right. As I said, this is a hearing on the
20 motion.

21 MS. CONNOR: Your Honor.

22 THE COURT: Yes.

23 MS. BURNS: I'm sorry to interrupt. This is Anna
24 Burns from the Federal Trade Commission participating by
25 telephone, and I believe that we have attorneys in Washington

1 as well participating, if they'd like to introduce
2 themselves.

3 THE COURT: All right, Ms. Burns.

4 MS. CONNOR: Good morning, Your Honor. Jacqueline
5 Connor for the Federal Trade Commission.

6 MS. GEORGE: Good morning, Your Honor. Tiffany
7 George for the Federal Trade Commission.

8 THE COURT: Good morning.

9 MS. TULLY: Good morning, Your Honor. Cathlin
10 Tully for the Federal Trade Commission.

11 THE COURT: Good morning.

12 MS. RAMIREZ: Good morning. This is Edith Ramirez
13 on behalf of Equifax.

14 THE COURT: Anybody else?

15 (No response.)

16 THE COURT: All right. As I said, this is a
17 hearing on the request to preliminarily approve the class
18 action settlement of the Consumer Class and the Plaintiffs'
19 motion to direct notice to the proposed settlement class,
20 which is our Docket Number 739.

21 All right. Mr. Canfield, it's the Plaintiffs'
22 motion. Are you going to go first?

23 MR. CANFIELD: I am, Your Honor. As the Court is
24 aware, but let me be formal about it, on behalf of the
25 parties and all the counsel in this case, I'm pleased to

1 inform the Court that, subject to your approval, we've agreed
2 to settle the consumer claims arising out of the 2017 Equifax
3 data breach.

4 The proposed settlement before the Court is
5 historic. Not only does the class relief dwarf that in any
6 prior data breach case, the settlement creates an
7 unprecedented notice program to engage the class and maximize
8 their participation.

9 Let me give you the top line numbers. The
10 settlement creates a non-reversionary consumer restitution
11 fund that will be used to pay cash compensation to class
12 members, provide credit monitoring, and help class members
13 navigate the maze they face when they're victimized by
14 identity theft. The initial amount of the fund is
15 \$380.5 million.

16 If needed, Equifax will pay up to another
17 \$125 million in additional cash compensation.

18 Equifax will also pay potentially much more if the
19 number of class members who sign up for credit monitoring
20 exceeds seven million. That amount is uncapped. So whether
21 people get credit monitoring doesn't depend on an expectation
22 of a low claims rate, and they're not ratcheted down if a lot
23 of people file claims. If all 147 million class members want
24 credit monitoring, Equifax is going to pay for it.

25 The settlement also requires Equifax to meet

1 comprehensive data security standards that will be audited by
2 outside experts, and its compliance will be subject to this
3 Court's enforcement power through a consent order in this
4 court. And Equifax is required to spend a minimum of
5 \$1 billion over five years to improve its cybersecurity.

6 The total cost to Equifax from the consumer
7 settlement is thus at least 1.38 billion and could be
8 significantly more, depending on the number of class members
9 who choose to participate.

10 The value of the settlement to class members is
11 much greater. Just let me give you an example of one of the
12 benefits.

13 Credit monitoring. The retail price to a class
14 member, if the class member wanted to go out on the market
15 and buy the same credit monitoring services that are
16 available under the settlement, that price would be roughly
17 \$1,920. So if each class member did that, the total cost for
18 the entire class would exceed \$282 billion.

19 We're here, obviously, for the Court to consider
20 whether to notify the class of the settlement and present
21 their views on whether the Court should approve the proposal
22 at the final approval hearing.

23 Notice is appropriate if the Court finds it's more
24 likely than not that the settlement will be approved and a
25 class certified and the proposed notice and claims programs

1 satisfy Rule 23.

2 If the Court makes those findings, it should issue
3 an order directing notice to the class and setting a final
4 approval hearing.

5 All counsel who are before the Court today believe
6 that the Court should issue such an order. And Plaintiffs
7 and Equifax have agreed upon a proposed order for the Court's
8 consideration that was submitted with the papers we filed
9 this morning.

10 We know those papers were large. It's another
11 500-page-plus filing that the Plaintiffs have made. We're
12 prepared today to walk the Court through the filings to the
13 extent they bear upon the issues that are before the Court
14 for consideration.

15 Mr. Siegel will cover the history of the
16 negotiations and the terms of the relief.

17 Mr. Siegel was chair of the Plaintiffs' settlement
18 committee and led the negotiations from our side of the
19 table. As much as any one person is responsible from the
20 Plaintiffs' side for where we are today, it is Mr. Siegel and
21 his leadership that has brought us here.

22 I will talk then about the notice program. Ms.
23 Keller will address the claims and administrations process.
24 And Governor Barnes will finish up with some closing
25 comments, and I'm interested to hear what they are because I

1 have no idea what he's going to say.

2 THE COURT: He may not either.

3 (Courtroom laughter.)

4 MR. CANFIELD: I'm sure he doesn't.

5 Before turning things over to Mr. Siegel and with
6 the Court's indulgence, I'd like to share a few personal
7 comments with the Court. The settlement is the product of
8 negotiations that started soon after the breach was
9 announced. The process was the most difficult and
10 contentious in which I have ever been involved, particularly
11 over the last few months.

12 At the same time, this case has been one of the
13 most personally rewarding cases in my career. We have a
14 phenomenal team of Plaintiffs' lawyers, and I didn't
15 recognize it, how good everybody was, until we got through
16 this case. We've developed tremendous trust in each other,
17 and we have relationships that will last a lifetime.

18 In many ways, we are the proverbial band of
19 brothers and a sister. And in that regard, the Court may not
20 have been aware, I certainly wasn't, but when you appointed
21 Ms. Keller as co-lead in this case, at 34, she was the
22 youngest woman ever named to the leadership of an MDL. And
23 based on what's happened since, the Court did not make a
24 mistake.

25 Ms. Keller has done more than carry her own weight.

1 She's done the same job as a lawyer who's nearly twice her
2 age, and in many ways she's done it better.

3 And this Court has also started a trend. Ms.
4 Keller was appointed to lead the Marriott data breach
5 recently, data breach case in the District of Maryland. And
6 with her talent, I expect that's just the second of many to
7 come.

8 There was equally a great team of defense lawyers
9 in this case. We started these negotiations, as I said, a
10 long time ago, and we began the journey with the folks from
11 King and Spalding, and we've gotten to this point with them.

12 And I want to personally commend Mr. Balser, Ms.
13 Sumner, Ms. Adler, and Mr. Haskins, who's not here, for the
14 way they handled this matter. We had enormous respect for
15 them and their firm before this case started. Our respect
16 has only grown as a result of the experiences that we've
17 shared.

18 Despite the enormous pressure we were all under,
19 trying to do our best for our clients, particularly over
20 these last few months, the folks at King and Spalding have
21 conducted themselves with the utmost professionalism,
22 cordiality and collegiality. It's hard to imagine that
23 Equifax could have been represented by better lawyers.

24 With that, Your Honor, I'd like to turn things over
25 to Mr. Siegel to start the deal with the details of the

1 settlement.

2 THE COURT: Mr. Siegel.

3 MR. SIEGEL: Thank you, Your Honor. May it please
4 the Court. I, of course, join in all of Mr. Canfield's
5 remarks about the process that led us here today.

6 I'm going to turn to a little bit more of the
7 minutia to make sure that we are making our record for
8 Rule 23 purposes, and that will begin with the dreaded
9 PowerPoint, which I promise only to refer to in passing as
10 much as possible.

11 I have a hard copy if you would prefer one. I can
12 hand it up.

13 (Hands to the courtroom deputy.) Thank you.

14 As Mr. Canfield started us off, the purpose today
15 is to ask the Court to issue notice.

16 The parties have agreed to a notice order that's
17 submitted to the Court. I have hard copies here as well.
18 I'm happy to work through the specific elements of that
19 notice order, which I'm going to do in the PowerPoint; but
20 also if there's any questions about any of the paragraphs set
21 forth therein, we'll be happy to address them.

22 In terms of sort of the blocking and tackling of
23 the rule, the first step is to determine in any class action
24 whether notice is appropriate. That's now bound in
25 Rule 23(e) that says notice is appropriate, again, if it's

1 more likely than not that the Court will finally approve the
2 settlement as fair, reasonable and adequate and certify a
3 settlement class.

4 The elements of Rule 23(e)(2), in considering
5 whether the settlement is fair, reasonable and adequate,
6 talks about whether the class was adequately represented,
7 whether the settlement was negotiated at arm's length,
8 whether the relief is adequate, which will be most of my
9 remarks this morning. And as part of that, part C of
10 Rule 23(e)(2), you have to look at the cost, the risk, the
11 delay of trial and appeal, and the method of distribution of
12 that relief, in addition to any attorneys' fees. Finally,
13 whether the class members are treated equitably under the
14 settlement.

15 So part one under the inquiry in Rule 23, as you'll
16 see in the notice order, is the certification of a class.
17 The class here is quite large, as you know, and it's defined
18 as -- we have it on slide three in the Settlement Agreement,
19 and that is the approximately 147 million U.S. consumers
20 identified by Equifax whose personal information was
21 compromised as a result of the cyberattack and data breach
22 announced by Equifax on September 7th, 2017.

23 We explain in our papers how this class, as
24 defined, meets the elements of Rule 23(a): numerosity,
25 commonality, typicality, and adequacy of representation.

1 It also meets the requirements of 23(b)(3) in that
2 the common issues predominate. And, of course, it is our
3 view that a class action is the superior way to resolve this
4 complex litigation.

5 Certifying a class for settlement purposes in data
6 breach cases is quite common. Your Honor, of course, did it
7 when I stood up here several years ago in the Home Depot
8 litigation.

9 Judge Koh in Anthem is another good reference
10 point. Judge Koh just on Friday preliminarily approved and
11 issued the notice order in the Yahoo case. And Anthem and
12 Yahoo are probably, at least in time and scale, the closest
13 analogues to the case before this Court, and we think
14 certification is therefore appropriate as part of the
15 preliminary process.

16 All right. The second element of Rule 23(e) talks
17 about whether the relief is adequate and the Court's finding
18 ultimately that it is more likely than not that the
19 settlement and final approval will be determined to be fair,
20 reasonable and adequate.

21 And we want to walk through the process because, as
22 Mr. Canfield alluded to, it was a lengthy one. It was
23 arduous. It was contentious but always professional. But in
24 the timeline, we think that the end result really burnished
25 the quality of the result here.

1 What we wanted just to lay out here in a very
2 general way was the last 16 months or so, 18 months from when
3 Equifax announced the breach in September of 2017.

4 You'll notice there in late fall of 2017, before
5 the case was transferred, we actually had our first mediation
6 with Judge -- retired Judge Layn Phillips. Judge Phillips,
7 as we explain in our papers, is a very experienced mediator,
8 a former federal judge in Oklahoma who has great experience
9 in the data breach field, including mediating Anthem.

10 We discussed early on in the case whether there was
11 a path to resolution, even before the JPML heard the case and
12 decided to send it to Your Honor, and we had these
13 preliminary discussions and part of those preliminary
14 discussions and that first mediation back in November of 2017
15 centered around what we crafted our demand, our structure for
16 settlement, and that structure for settlement essentially had
17 three top-level buckets that Mr. Canfield alluded to.

18 One is a cash fund that would pay for out-of-pocket
19 losses associated with the breach, but also pay for lost
20 time. And I'll get into that in a little more detail.

21 The second bucket dealt with the provision of
22 providing a monitoring service and a quality monitoring
23 service for each and every one of the 147 million class
24 members who are victims of the breach.

25 As another component of that, we wanted restoration

1 services. And the difference there, as I'll explain, is
2 restoration services are available to the entire class,
3 whether or not they sign up for monitoring.

4 And then the third bucket, as Mr. Canfield
5 mentioned, were these business practice changes. We knew
6 from day one post-announcement, once these cases were filed,
7 that trying to figure out a way to try to work with Equifax,
8 work with our own experts to figure out how we can have a
9 structure to this settlement that would ensure that we do
10 whatever we can do as civil litigants to make sure a breach
11 like this does not happen again at Equifax, and that was a
12 core goal of ours from day one and certainly was part of what
13 we were proposing in that first mediation back in November of
14 2017.

15 As I'll explain, all of those elements carried
16 through the previous two years leading to the settlement
17 that's being presented to the Court today.

18 If you skip ahead to that January 2018 time frame,
19 after the panel sent the case to Your Honor, as Mr. Canfield
20 alluded to, there was an appointment order. The appointment
21 order we think at the time, but as Mr. Canfield said, in
22 hindsight, put together probably the best lawyers in the
23 field for a data breach case.

24 We have the leaders of the Anthem data breach case,
25 which several of us were involved in, but led by Andrew

1 Friedman, who was lead counsel. We had John Yanchunis, who
2 led the Yahoo case, which was approved just Friday, and
3 several others that had a very deep background in litigating
4 and settling data breach cases, figuring out what the relief
5 clients wanted in response to an event like this. Those
6 resources were pooled to begin a very, very rigorous,
7 in-depth case investigation.

8 We engaged the best experts in the field related to
9 damages, data security, monitoring products, to make sure
10 that when this day came today, we'd be prepared to tell the
11 Court that we were delivering the best data breach settlement
12 that we were able to, and hoped to top those that came before
13 us, which is exactly what we've done.

14 Your Honor knows that in May, we filed the 559-page
15 Consolidated Amended Complaint.

16 I note our papers -- this is not intentional -- in
17 support of this settlement was only 554 pages. So we were
18 five pages short of the Complaint. But I do think it speaks
19 to the scale of this litigation. Right? The size of the
20 Complaint was driven in large part by the factual record we
21 were able to develop. Of course, the number of plaintiffs
22 from each and every state and the settlement meets that
23 scale. It's, as we've said several times already, the
24 largest data breach settlement recorded to date.

25 That, of course, led to Equifax filing their

1 motion. And as the Court is well aware, there was full
2 briefing on the motion to dismiss. Throughout that period we
3 continued to try to mediate the case with Judge Phillips
4 through the summer and into the fall of last year.

5 And then we argued those cases in December of last
6 year and the parties were still very far apart. In Judge
7 Phillips' declaration, which is attached to our motion, he
8 explains the fits and starts, the progress of the good-faith,
9 arm's-length negotiations, but ultimately the really stalling
10 out when we came here and argued those motions, and we
11 continued to talk.

12 I directed dialogue with the King and Spalding
13 lawyers, including Mr. Haskins, who's not here today, to try
14 to keep a little fire, a little flame there to hope we can
15 try to resolve the case, but it was clear that we would need
16 an order from Your Honor, which we received in January of
17 2019. That did a couple of things. One is it allowed us
18 under the Northern District rule to have full-on discovery.

19 We received an initial 500,000 pages, which we
20 reviewed. We started scheduling depositions. We looked at a
21 ton of documents that were in electronic form outside of that
22 production, and continued to dialogue about potential
23 settlement.

24 Now, this entire time, in the context of
25 settlement, we had -- in addition to all the mediations you

1 see on the timeline, we had just scores of conversations,
2 meetings, meetings in Atlanta with Equifax's counsel, our
3 technical experts, their technical experts, again, all in an
4 effort to reach the day where we could reach a final
5 settlement agreement.

6 In March of this year, the parties agreed to
7 mediate for a fifth time before Judge Phillips. We had a
8 lengthy meeting the night of the 29th to try to resolve many
9 of the business practice terms, and then we spent the day on
10 the 30th working diligently on the monetary terms.

11 And we executed on March 30th, 2019, a binding term
12 sheet, an enforceable settlement with Equifax to resolve this
13 litigation. That contained all of those elements, those
14 three buckets that I explained from the start and put us in a
15 position to enforce that deal as to Equifax.

16 We also agreed that we would listen to and consider
17 any proposals by the federal and state regulators that were
18 also looking at Equifax and their conduct related to this
19 breach.

20 And so we had an enforceable agreement. A
21 component of that agreement was we would consider, but were
22 not obligated, to take on any provision suggested by the
23 regulators and that's what happened. The regulators made
24 several proposals. We accepted some, rejected others. It
25 was all in the construct of our settlement and the three

1 buckets.

2 But because we did not agree on everything squarely
3 and the regulators weren't participating in our negotiations,
4 that led to an extended period since March, where we were
5 negotiating now with the regulators and Equifax, and
6 ultimately had several meetings in Washington, D.C., with
7 many of the folks on the phone, productive conversations but
8 difficult ones because there were new discussions of terms,
9 some of which, as I said, we readily accepted, others which
10 needed a little more refinement before we viewed them in the
11 best interest of the class. But those discussions and the
12 regulators on the phone were quite helpful in bringing the
13 final resolution to the case and the settlement that is in
14 front of the Court.

15 I should also mention the idea of going to the
16 regulators, even though they do not have a case on file.
17 It's not a situation where there's a regulatory action that
18 is filed, like an antitrust case and then a civil lawsuit
19 that files it. It's perhaps a little bit of the reverse, at
20 least from our perspective. We were aggressively litigating
21 the case, reached the settlement in March, and then began
22 this discussion with the regulators. And I think that kind
23 of construct is contemplated by the Federal Judicial Center
24 pocket guide, which talks about inviting the regulators'
25 opinions on class action settlements.

1 So we were happy to have their input and, as I
2 said, quite pleased that we were able to work out our
3 differences and reach the settlement presented to the Court
4 today.

5 So I'm going to skip over slide five, for the most
6 part. These are the top line numbers that Mr. Canfield
7 mentioned: A \$380.5 million fund, an additional \$125 million
8 available for out-of-pocket losses. Again, all in the
9 framework we set out in the fall of 2017.

10 The settlement achieves the litigation goal of,
11 again, securing that monetary relief for out-of-pocket losses
12 but also time spent. It achieves the goal of providing
13 really credit monitoring, robust credit monitoring. As Mr.
14 Canfield said, that the cost to Equifax could go
15 significantly higher if everybody signs up for this
16 monitoring.

17 So anybody who can hear my voice, that is the best
18 way, in our view, to make the best of this settlement is to
19 take this quality monitoring that's provided under the
20 settlement. And as Mr. Canfield said, if sign-ups exceed
21 seven million people, Equifax may have to pay additional
22 funds for folks who sign up in excess of seven million. We
23 certainly hope that's the case. As Mr. Canfield will talk
24 about in a little bit, the notice program, we think, will
25 help drive those claims.

1 The settlement also provides alternative relief.
2 If somebody has monitoring and they just like it and don't
3 like what we're offering, they can make a cash claim in lieu
4 of monitoring for \$125.

5 The settlement also achieves the litigation goal of
6 providing that seven years of access to identity restoration
7 services. Again, this is a critical component, in our view,
8 because it allows class members to access a call center if
9 they do have an event two years down the line, three years
10 down the line, five years down the line, even if they don't
11 make a claim and even if they don't sign up for credit
12 monitoring.

13 So if those folks do have an event, they're going
14 to be able to contact somebody to help them with assistance
15 with any sort of identity theft or fraud issue.

16 The next bullet point is the business practice
17 changes. I mentioned that we engage an expert. Her name is
18 Mary Frantz. I'll talk about this in a little more detail,
19 because it was such a critical component from day one.

20 We have very specific obligations and undertakings
21 for Equifax. As part of that, as Mr. Canfield said, they're
22 obligated to spend a billion dollars to meet those standards.
23 Spend more, if necessary, but we also have a consent order,
24 as I'll walk through as well, that attaches to those business
25 practices changes mandated by the agreement.

1 As a result of this process, the components of the
2 relief I described and I'll go through in more detail, the
3 notice plan in particular, the claim form, the settlement
4 website all received input and support from the Federal Trade
5 Commission, the CFPB, and the attorneys general from forty-
6 -- it's actually 48 states, two territories.

7 Finally, and again from class counsel's perspective
8 critically, this settlement has been approved by settlement
9 class representatives from every state. There were two we
10 could not get ahold of. So nobody has opposed it.

11 There is one that we just got ahold of this
12 morning, Margaret Hinkle, who we will add to Exhibit 10 as a
13 settlement class representative who supports this agreement.

14 Let me break down a little bit further these three
15 buckets. The first bucket is this monetary bucket. So just
16 graphically, Your Honor, any claimant can make all the claims
17 you see there on slide seven up to \$20,000 for out-of-pocket
18 losses, \$500 for lost time, the ten years total of credit
19 monitoring, and then seven years of restoration services.
20 And then in terms of what can be in that \$20,000, it's
21 anything tethered to the breach. So this is a non-exclusive
22 list here on slide eight.

23 If you spent money freezing or unfreezing your
24 credit, if you purchased credit monitoring in response to the
25 breach, if you have unreimbursed costs because of identity

1 theft or fraud following the breach, sort of associated
2 miscellaneous expenses responding to the breach, professional
3 fees, and then 25 percent of any Equifax product you
4 purchased.

5 Now, again, this is a non-exclusive list, and the
6 reason we set it up as a non-exclusive list is we don't know
7 every category of damage that folks may have related to the
8 breach, either to date or in the future, and therefore wanted
9 to make sure this was open-ended. As long as it's fairly
10 traceable to the breach, folks will be able to make that
11 claim, again, up to \$20,000.

12 So this is also controlled by a claims protocol
13 that we worked on with the regulators -- this is Exhibit 9 to
14 the Settlement Agreement -- which really explains the
15 open-ended nature of that claims process.

16 The second significant component of this ability to
17 make a claim that I mentioned is time. Your Honor, when we
18 started doing these data breaches, for me probably with the
19 Target data breach, the main complaint people have is, "I'm
20 not really out of pocket dollars. I am out of pocket time.
21 I've spent a lot of time dealing with this, and that is my
22 harm."

23 So we have in this settlement the ability for folks
24 to claim up to 20 hours of time associated with dealing with
25 the breach. Half of that time can be self-certified and

1 doesn't require documentation. And I included a quote from
2 Judge Bredar, who's the chief judge in the District of
3 Maryland. I had a much smaller, 60,000 class member data
4 breach settlement before Judge Bredar that was finally
5 approved last week. This was a class of eye doctors. The
6 testing organization lost its data. They had a breach of
7 sensitive information.

8 We had a time component, and he latched onto this.
9 And I do think it conveys probably as good as anybody that
10 the concept of time, that recovery for time dealing with the
11 data breach is beneficial for those who often have little in
12 the way of out-of-pocket losses but who are required to spend
13 tremendous amounts of time dealing with the effects of the
14 data breach. Again, this is another element that we think
15 makes this settlement truly historic.

16 The second bucket is the credit monitoring. Again,
17 four years of Experian, three-bureau monitoring, six years of
18 single bureau provided by Equifax. The elements of those are
19 in Exhibit 4 to the Settlement Agreement.

20 We attached to our motion the declaration of James
21 Van Dyke, who explains why this monitoring service in
22 particular meets the needs of this class. This is, again, a
23 high-quality product that we want every single 147 million
24 class member to sign up for because it is a great value and
25 does really address the harms related to what was compromised

1 in this breach.

2 And, again, if class members already have another
3 product and they want to make an alternative claim for cash,
4 they can claim \$125. If we stay on course and we're able to
5 get this settlement approved finally by the end of the year,
6 that would basically provide monitoring for a decade through
7 about 2023. Again, historic relief.

8 The identity restoration services. Again, I
9 mention that's just the access to the call center for the
10 next seven years.

11 Let me explain a little bit about the claims
12 periods. The initial claims period is six months. So folks
13 will have six months to sign up for the credit monitoring
14 product. If you sign our order today -- I hope I'm not being
15 too presumptuous, but the claims would start immediately.
16 The website is ready to go. We have spooled everything up
17 and it is ready. Operators are literally standing by, if
18 Your Honor sees fit to sign the order.

19 But that period when you do sign it will start the
20 six-month period. If there's funds left over at the
21 conclusion of that six-month period, there will be an
22 additional four years extended claims period for folks to
23 make claims for out-of-pocket losses and time.

24 If there's still money left over four and a half
25 years from now, we have specifically addressed how that money

1 will be spent and distributed. First, it'll go for identity
2 restoration services, extending that seven-year period up to
3 ten years. So that would be through about 2030. And then it
4 would add additional monitoring.

5 I'm sorry. I need to correct the record. The
6 first step is it removes the caps on time and alternative
7 compensation, which are at 38 and 31 million dollars,
8 respectively. So if there's money left over after that
9 period, those caps come up first. Then the identity
10 restoration addition, followed by the additional monitoring.

11 The third bucket, which I've already touched on, is
12 the data security and business practice commitments. This
13 is, again, a critical component. Mary Frantz, our expert,
14 has submitted a declaration explaining the importance of
15 these modifications. This is Exhibit 6 to our memorandum.

16 The specific obligations of Equifax are set forth
17 in Exhibit 2 to the Settlement Agreement. And the specific
18 elements are also contained in a proposed consent order that
19 is Exhibit 3 to the Settlement Agreement.

20 And you can see there on slide 14 some of the
21 things for which we negotiated, again with the significant
22 assistance of a very, very well-known, highly-trained
23 technical expert, to address vulnerabilities that Equifax had
24 in data security.

25 And the purpose of the obligations under the

1 Settlement Agreement, contractual but also this consent
2 order, is to give that some teeth. We want to make sure
3 that, again, as civil litigants, we are doing everything in
4 our power to make sure that the class is protected from
5 another data breach. And through Ms. Frantz's assistance,
6 and her declaration explains it in technical detail, why
7 these changes are so important.

8 And we appreciate Equifax's willingness to engage
9 in that and ultimately agree to these changes. I think they,
10 too, agree that changes needed to be made and are taking
11 those on.

12 So the collection of relief here, Your Honor,
13 again, truly, truly historic.

14 We've attached to our papers as Exhibit 3 a
15 declaration from counsel, and the exhibit to that exhibit is
16 a chart of data breach cases and how they were resolved with
17 claimants in excess of ten million.

18 And if you look at that on any level, on any
19 metric, this settlement that we're presenting to the Court
20 today is larger by several orders of magnitude; and as Mr.
21 Canfield's opening remarks made clear, we're very proud of
22 the result and think that the class will be substantially
23 benefited by the settlement.

24 The last slide in my presentation is service awards
25 and attorneys' fees. This is another component of Rule 23(a)

1 consideration. The last point is probably the most
2 important, which is we will need to make a separate
3 application, which we will do at least 21 days before the
4 objection deadline.

5 The fees that we will seek is up to the amount
6 agreed to in the -- or Equifax has agreed not to oppose in
7 the agreement we struck at the end of March. It is tethered
8 to our agreement before any involvement of any regulators.

9 And we will also seek 21 days before the objection
10 deadline service awards for all those class representatives
11 that step forward.

12 If Your Honor does not have any other questions on
13 the substantive relief, I'd like to hand it back to Mr.
14 Canfield, who will talk about the notice program.

15 THE COURT: All right. Thank you, Mr. Siegel.

16 MR. SIEGEL: Thank you, Your Honor.

17 THE COURT: Mr. Canfield.

18 MR. CANFIELD: Your Honor, the parties have
19 presented the Court with a notice plan that we believe and
20 the experts agree satisfies all requirements of due process
21 and Rule 23.

22 The plan was originally developed by class counsel
23 and the designated notice provider, Signal Interactive Media,
24 and it was refined in cooperation with Equifax and consumer
25 experts at the FTC and CFPB.

1 The plan is set out in detail in Exhibit 6 to the
2 Settlement Agreement and explained in further detail by
3 Signal's co-founder Jim Messina in a declaration that's
4 attached to the briefs that Plaintiffs filed this morning.

5 The notice program that we're presenting is really
6 a first-of-its-kind effort. Oftentimes in class actions,
7 traditionally the notice programs haven't been particularly
8 effective, and the problem seems to be getting worse as
9 people are changing how they get their information. Mail and
10 postcards often are discarded, unopened as junk mail. Class
11 members may never see newspaper ads. And while courts are
12 increasingly approving digital notice efforts, the results
13 commonly fall short.

14 A lot of notice efforts have drawn criticism,
15 judicial criticism because the claims rates have not been
16 large enough to indicate that the class was really engaged.

17 The notice plan that we're proposing tries to
18 improve on past efforts by trying something different, and
19 the underlying premise is that class members can be better
20 engaged and claims rates will increase if modern technologies
21 developed in commercial and political advertising are applied
22 to the world of class actions.

23 These key techniques involve the use of focus
24 groups, national surveys, opinion surveys to find out where
25 people in the class get their information and what messaging

1 works for particular class members. The same message is not
2 going to engage a single woman in New York City in the same
3 way that it might a rancher in the rural part of Texas.

4 Once that initial qualitative research has been
5 done, the messaging is then going to be tested by sending it
6 out to small subsets of the class and, through empirical
7 data, finding out what works with particular people, and then
8 based on that information, a classwide notice program will be
9 launched and Signal will continue to monitor empirical data
10 about what's happening and what isn't, and then adjust the
11 messaging and the targeting and where ads are placed, as
12 needed, to try to improve the results.

13 There is a real-world example that shows these
14 techniques can work, and that is the case called Power versus
15 Remington Arms. And in that case, the Court preliminarily
16 approved a settlement and authorized a three-month
17 traditional notice campaign that involved direct mail,
18 magazine publication and social media publication.

19 After those three months, the claims rate was so
20 low that the Court declined final approval and ordered
21 supplemental notice.

22 Signal was retained by the parties to do that
23 supplemental notice, and using some of the same techniques
24 that we propose to be used here, they did the supplemental
25 notice.

1 And this chart that is up on the screen now shows
2 what the impact of the kind of techniques that we're
3 proposing to use here can have. And if you see that along
4 this timeline, the blue line shows the number of claims that
5 were filed over a period from May to December. And in the
6 traditional notice period, there were relatively few claims.

7 At the time, the Court declined to approve the
8 settlement and implemented the supplemental notice program.
9 As Signal was going through its testing to figure out which
10 messages work, you can see there's a little bump in the
11 claims rate; and then when they implemented their full media
12 campaign, claims skyrocketed.

13 So we believe these techniques will work and that
14 we hope that they will have the same kind of impact in this
15 case as they did in Remington.

16 Now, under the notice plan in this case, there are
17 essentially two notice periods. The first one is what
18 happens by the notice date, which is a date 60 days before
19 class members have to object or opt out, so that class
20 members are informed about the settlement and they have an
21 ability to decide whether they want to object or opt out.

22 In that first period, before the notice date,
23 e-mail notice will be sent to all class members containing
24 all of the information that Rule 23 requires, and as I say,
25 that e-mail will be sent to all class members whose e-mail

1 addresses can be identified through reasonable efforts.

2 Equifax has many. JND, the settlement
3 administrator, will be getting those e-mail addresses from
4 Equifax, and then from commercial sources buying e-mail
5 addresses for as many class members as can be obtained.
6 Signal also has a proprietary database of e-mail addresses
7 that will be used in the effort.

8 The record that we've submitted shows that JND
9 expects that they will get e-mail addresses for at least 75
10 percent of the class. That's all they would commit to in
11 their declarations, but we anticipate that they will get a
12 higher percentage.

13 So that's the first e-mail before the notice date.

14 In addition, Signal is going to do an aggressive,
15 comprehensive digital advertising effort on Facebook,
16 Twitter, Instagram, Google, Yahoo and other programs or
17 platforms.

18 This plan is designed so that in that first initial
19 notice period, 90 percent of the class will be reached
20 through this digital advertising on average eight times. And
21 some of that advertising is going to be videos. There will
22 be clips that people can click on so that there will be an
23 actor and he'll explain something about what's going on. And
24 the research shows that people respond a lot better to video
25 than they do to some ad.

1 And the important thing about both the e-mail and
2 the digital noticing campaign is that a class member who gets
3 an e-mail or sees an ad on Facebook can just click through,
4 right through that ad straight to the settlement website and
5 file a claim electronically. So we've made that part as easy
6 as possible.

7 The next thing that will be done before the notice
8 date is that there will be radio, a national radio
9 advertising campaign and some newspaper advertising to reach
10 class members who don't use e-mails and have a digital --
11 don't have a digital presence, and that's one of the things
12 that the focus groups and opinion survey will do is to
13 identify those people and figure out where they get their
14 information.

15 Now, layered on top of this plan is the immense
16 coverage of the settlement that we expect is going to occur
17 on national and local television, digital platforms and print
18 media and --

19 THE COURT: This is starting to sound like a
20 presidential campaign, Mr. Canfield.

21 MR. CANFIELD: We hope that -- it's not going to be
22 that big, but we are trying to make a splash with the notice
23 program, Judge.

24 I think it's safe to say that by the notice date,
25 there will be few class members who have not heard about the

1 settlement.

2 After the notice date, during the initial claims
3 period that will run six months from when the Court enters
4 its preliminary approval order, the outreach program will
5 continue. Class members will receive at least three
6 additional e-mails: One midway through the initial claims
7 period;

8 One towards the end that's basically a reminder and
9 says the deadline's running out and you need to file a claim;
10 and,

11 One at the beginning of the extended claims period
12 to inform class members that that period is starting and to
13 let them know about their continuing ability to file claims.

14 Although less intense, digital ads will continue to
15 run through the initial claims period. Again, it's designed,
16 the digital campaign, to reach 90 percent of the class an
17 average of six times. So that by the end of the initial
18 claims period, 90 percent of the class will have been reached
19 on average 14 times through this digital program.

20 Mr. Siegel referred to the approval of the
21 preliminary -- preliminary approval of the Yahoo data breach
22 settlement that occurred in the last few days.

23 I haven't had a chance to study the Court's order
24 in that case, but my understanding is that the notice program
25 that she approved involved a similar use of e-mail and

1 digital, but the digital plan was designed to reach only 80
2 percent of the class an average of three times; and the
3 messaging was not going to be developed, tested and targeted
4 in the way that Signal is doing, and which we believe will
5 significantly enhance class member participation.

6 The digital advertising effort will continue after
7 the end of the initial claims period, although on a much,
8 much less intense basis. In fact, the digital ads will
9 continue right up until the time that credit monitoring -- or
10 the identity restoration services are available to class
11 members.

12 And to give you an example of how Signal intends
13 that it would work, five years from now if somebody is a
14 victim of identity theft, they are unlikely to remember,
15 "Hey, five years ago I was told that if that happened to me,
16 I could go -- I had this service available that I could
17 consult with to help me navigate the process."

18 So they may go online and enter something like, you
19 know, "How do I deal with identity theft?"

20 If they do that on Google or Yahoo or some of the
21 other search engines, websites, there will be some digital
22 advertising that pops up and it says, "As a result of this
23 Equifax data breach settlement, you're eligible for free
24 services."

25 So we think that would be something that would be

1 useful to the class. All of the proposed e-mails and
2 advertisements that Signal will use are attached to the
3 notice plan. There are a lot of them. It may be that Signal
4 doesn't use them all. It will depend on what the testing
5 results show.

6 But no ads will be used for either testing or for
7 actual sending to the class unless they have been approved by
8 the Court. And all of the parties have approved these ads.
9 They have also passed muster with the federal regulators.

10 We're proud of this plan. It took a lot of work.
11 And while it's new, the Court can also -- and you have an
12 attestation from Signal that it satisfies all due process
13 requirements.

14 It's also been blessed by JND, the settlement
15 administrator, which is a widely regarded, traditional notice
16 expert in its own right that has handled hundreds of notice
17 campaigns in traditional class actions. And JND has
18 submitted a declaration saying the notice plan meets all
19 standards.

20 So we believe it will help set the benchmark for
21 notice programs in future class actions, and we ask that it
22 be approved by the Court.

23 And let me -- since I've got this PowerPoint that
24 Mr. Siegel put together, we have some examples of the kinds
25 of ads that will be used and tested, and these examples give

1 the Court some idea of how the ads differ.

2 So, for example, this ad that is up now is the kind
3 of ad that would be on Facebook and it tells the viewer that
4 their information may have been impacted by the data breach
5 and says, you know, find out if your information was
6 impacted, and they can click to see if they're a class
7 member. That's one way to try to reach the class.

8 Another way is the next example, and another --
9 this is another example of a Facebook ad.

10 And you can see that instead of asking a consumer
11 whether they should click through to find out whether they're
12 a class member and doesn't really say much about the
13 settlement, it starts out with the description of the amount
14 of the fund, which may attract the attention of a potential
15 class member in a way than an ad that doesn't have that kind
16 of information wouldn't.

17 And you can see again it has a directive to claim
18 your class-action benefits under the proposed settlement, and
19 they can click right onto the settlement website.

20 And these other ads are similar examples. The one
21 on -- that I have up on the screen now is an example of the
22 kind of ad that would be used as the deadline is approaching
23 at the end of the initial claims period and it informs the
24 class member that time is running out, and if you want to
25 make a claim, they need to do it now.

1 And then I thought I would give the Court some
2 sense of the kind of ads that when somebody goes online and
3 they're searching, there are ads that pop up. These are
4 examples of banner ads, and as you can see, it has a little
5 bit of information about the settlement, designed to attract
6 the attention of the class member and cause them to click
7 through to get to the settlement website.

8 So that's basically the notice program, Judge, and
9 we urge the Court to approve it.

10 THE COURT: Thank you, Mr. Canfield.

11 Ms. Keller.

12 MS. KELLER: Good morning, Your Honor. Amy Keller,
13 again, co-lead counsel for the Consumer Plaintiffs in the
14 Consumer Class Action.

15 Before I begin, I wanted to echo Mr. Canfield's
16 comments, and would add that being on this team and
17 representing the 147 million consumers affected by the data
18 breach has been probably the highest honor that I've had in
19 my life thus far. So I would thank the Court for putting
20 together the team that it did and trusting us with the
21 important representation task that we have before us.

22 I also would like to address the Court in support
23 of the settlement and talk about briefly the claims
24 administration process. It was important to us, Your Honor,
25 if we were negotiating settlement that had incredibly robust

1 benefits for the class and a really innovative notice program
2 that had a targeted notice plan that would reach the class,
3 that the consumers would actually be able to take advantage
4 of those benefits and use a claims program that was easy to
5 navigate, easy to explain, and easy to take advantage of.

6 We submitted bids to settlement administrators
7 across the country, and it was subject to a highly
8 competitive bid process. Given the nature of the case,
9 of course, we were concerned about security. And JND has
10 undergone rigorous reviews of its systems privacy policies
11 and procedures; and based upon what we learned from JND, the
12 parties were confident in supporting proposing their
13 appointment to the Court as the claims administrator.

14 JND has been working very closely with Signal to
15 develop a notice plan to ensure that not only does the class
16 get e-mail notification of the settlement, but also that JND
17 uses its expertise to approve what Signal is doing as well.

18 So as Your Honor heard from Mr. Canfield, JND will
19 be responsible for sending out the notice to the settlement
20 class members, which they have conservatively estimated they
21 would be able to get the e-mail addresses from 75 percent of
22 those class members. We anticipate, Your Honor, as Mr.
23 Canfield said, that that number will go up significantly
24 after JND has an opportunity to really dig into the class
25 list and use third-party data courses to build out that

1 e-mail list.

2 As of right now, Your Honor, we have asked JND to
3 put up a landing page website available to informed consumers
4 before preliminary approval about the details of the proposed
5 settlement.

6 We are, as we speak right now in this courtroom,
7 working out the details of that landing page, and the parties
8 have been very hard at work to ensure that as much
9 information is available to consumers as possible, and that
10 process is an ongoing process, Your Honor.

11 As soon as preliminary approval is granted, Your
12 Honor, we will work to put up a full settlement website as
13 soon as possible following preliminary approval. That
14 website will also be available in Spanish.

15 Recognizing the importance of security, Your Honor,
16 class counsel went out and purchased approximately 100
17 similar website URLs before this -- before we even
18 contemplated settlement in order to ensure that in the
19 future, spoofing and fraud attempts could be mitigated. And
20 we're working with the regulators, including the FTC and the
21 CFPB, to identify any spoofing websites so that we can track
22 those very carefully and very clearly.

23 Your Honor, the website, the full website will be
24 up throughout the claims process. So not only the initial
25 claims period but the extended claims period. And then

1 beyond that, Your Honor, the website will be up to explain to
2 consumers how they can take advantage of the identity
3 restoration services.

4 It's important to us, Your Honor, that the
5 consumers have a place where they can go where they can
6 always receive information about the settlement, and we are
7 prepared to ensure that the website stays updated with the
8 information that consumers need.

9 As part of the settlement, Your Honor, we worked
10 very closely with Equifax, JND and the regulators, who are on
11 the phone now, to develop a claim form that was easy to
12 understand and complete.

13 The claim form that you have attached to the
14 filings we put before you, Your Honor, it's Exhibit 8 to our
15 Settlement Agreement, will also be available online and
16 optimized for mobile devices. That means that if you're
17 waiting in line at Starbucks for your coffee, you can file a
18 claim for this settlement, Your Honor. It is that easy to
19 use, at least we hope.

20 There's also a look-up tool, Your Honor, that would
21 allow class members to determine whether or not they were
22 impacted by the initial data breach. The look-up tool, JND
23 worked very closely with Equifax to utilize their technology
24 and to pull from Equifax's sources the class list using that
25 technology so that class members could determine whether or

1 not they were impacted by the breach before they could make a
2 claim.

3 The website also contains the ability for consumers
4 to track the status of their claim so that they can see
5 whether the claim was submitted, whether the claim was
6 rejected, and how they can go about fixing that, or whether
7 the claim was approved.

8 If a claim is rejected, Your Honor, attached to
9 Exhibit 9 of the settlement agreement is a claims protocol.
10 We negotiated that, Your Honor, with Equifax as part of our
11 Settlement Agreement; and we took input from the regulators,
12 including the CFPB, the FTC, and the state attorneys general
13 to make sure that the claims protocol was as transparent as
14 possible and that it was consistent and also allowed for
15 cases -- close calls, Your Honor, where claims might be
16 submitted right around the deadline or maybe not enough
17 information was submitted, so that we could figure out what
18 to do with those claims and treat everybody in the class
19 fairly.

20 JND will use that claims protocol in processing
21 claims so that we can be assured that the process is
22 transparent as well as consistent.

23 Your Honor, there will also be available a
24 toll-free number with interactive voice response technology
25 available 24/seven, and then live operators available during

1 various business hours, depending on how many people call the
2 line and when.

3 That interactive voice response technology as well
4 as those live operators are standing by right now. So if
5 Your Honor grants preliminary approval today and people try
6 calling the toll-free number, they will be able to get a live
7 operator today.

8 JND will work with class counsel and Equifax to
9 staff up or down the operators on the toll-free number so
10 that we can make sure that we're as responsive as possible,
11 including with the technology to receive callbacks in times
12 where there are a lot of people making phone calls to the
13 toll-free number.

14 E-mail support for class members is also available,
15 and class members can also contact the settlement
16 administrator by a secure form on the longer website.

17 Finally, Your Honor, class members will have a
18 choice when it comes to their out-of-pocket losses as to how
19 they will receive their class benefits.

20 It was important to class counsel, Your Honor, that
21 when we negotiated a settlement, all class members would be
22 able to take advantage of it, no matter what their
23 circumstances.

24 As you may know, if individuals receive a check and
25 they don't have a bank account, sometimes they have to pay a

1 fee to cash that check.

2 By allowing class members to select the option of a
3 payment card which never expires and does not charge class
4 members any fees, we can also accommodate those class members
5 who don't have checking accounts to make sure that they get
6 settlement options as well, and they don't have to come out
7 of pocket to receive those settlement benefits.

8 Class members, again, can select which option they
9 would like, and those distributions will be made to class
10 members to the address that they provide to JND. And JND can
11 also update the class member's address via the secure claim
12 form on the website.

13 Your Honor, we've included with our PowerPoint
14 presentation here the various dates that would potentially
15 fall if Your Honor were to grant preliminary approval today.
16 That's the next slide.

17 And then I, being now the third co-lead counsel to
18 speak, it is my honor, I would guess, to introduce Governor
19 Roy Barnes, who it looks like will be giving a few words as
20 well.

21 Thank you, Your Honor.

22 THE COURT: Thank you, Ms. Keller.

23 Governor Barnes.

24 GOVERNOR BARNES: Your Honor, you know there are
25 some things in life that can't be involved with money. This

1 is not one of them. And it has been involved by money and it
2 has been solved by lawyers working together.

3 This case could have been a monster, but this is a
4 good example of what happens when you have lawyers on both
5 sides that are competent and good lawyers and that don't
6 fight each other but come to some conclusion.

7 We knew in the early parts -- it's been told to you
8 by the timeline -- this case needed to be settled. Equifax
9 needed to pay and they needed to pay heavy.

10 However, it is counterproductive to put them out of
11 business. There are only three credit bureaus or credit
12 companies, and if you put Equifax out of business, all you've
13 done is incorporated and strengthened the remaining monopoly
14 that exists. And that was not a fair solution to consumers
15 either.

16 So what has happened through all of this process
17 is, using those touch points, that is, we want to make sure
18 they pay every penny that they need to pay. Secondly, it
19 does not need to be hashed out in litigation that goes on
20 ad nauseam.

21 I had a land dispute, land line dispute that I took
22 in in the 1970s. I finally got rid of it when I went to the
23 governor's office and told them that I couldn't represent
24 them anymore. This case could have gone on as long, and that
25 is counterproductive.

1 I think a lot of lawyers that you see and that come
2 before you do not realize the corrosive effect of time and
3 wearing out your clients and the clients not getting the
4 relief that they deserve.

5 So you've heard the outline of the case, and we
6 think it is very -- it has been very good, and we think it is
7 good.

8 We have been pleased to work with the regulators.
9 We met last week in D.C. We've had different meetings and
10 conference calls. We'd have conference calls that we'd have
11 to take a break to go to the bathroom on. And last week we
12 finally got together and we said we're going to hash this out
13 and we're not going to leave here until we get it done.

14 We were very kindly hosted up in D.C. by King and
15 Spalding's office there at a big convention room, I call it,
16 you know, where everybody sits on the other side and stares
17 at each other.

18 But that's not what happened in this case.
19 Everybody was convinced that this should work, and the
20 regulators -- I don't know if you've seen the petition and
21 the consent order. We went through -- they asked us for our
22 input. We asked them for theirs.

23 And so the agreement you have and the two consent
24 orders -- well, really, there will be a third from the
25 attorney generals, but those will be filed in state court, I

1 assume. But the two consent orders from the CFPB and from
2 the FTC incorporated what we were doing and what they were
3 doing. And I won't get into all the details, but there's
4 funds that are going to be administered really through our
5 fund, too.

6 And the regulators had -- you know, they had a
7 different focus than we did, but we shared a common goal and
8 that is for these who have been the victims of the data
9 breach, that they get the full complement of financial and
10 non-financial benefits, and that is put into effect at
11 Equifax practices and procedures and protocols where this
12 does not happen again.

13 As we've said, the regulators, we've worked
14 together. And the regulators' orders and our settlement work
15 hand in hand. You know how difficult that is with different
16 groups that have different focuses. But we're glad to be
17 here and have a unified effort of us with the regulators and
18 the regulators with us to say, Listen, what is being proposed
19 to you both in this settlement and in the consent orders that
20 will be presented to you by the regulators is the best
21 and the best settlement in a data breach case that I have
22 seen or ever been a part of it.

23 So we ask you to allow the preliminary approval.
24 We ask you to allow us to go forward with the notice. We're
25 going to keep you updated, as we're required to do.

1 The notice plan that has been outlined is something
2 that, as Mr. Canfield has talked about, has been long
3 negotiated, and we're very excited about how to do that.

4 And everything, every dot and every tittle has been
5 negotiated fully. For example, we even got down to -- you've
6 seen the video things -- are the people there going to be
7 angry, smiling or neutral? And we negotiated that and it
8 came forth and we have reached an agreement.

9 And I want to tip my hat to King and Spalding for
10 the work they've done in this case.

11 Now, don't take this in every case. The next time,
12 I may be on you.

13 But in this case, we have -- we've worked very well
14 together, and the Plaintiffs' counsel have worked well
15 together. And it's really what I consider -- I've been doing
16 this a long time -- to be the best example of
17 professionalism, keeping in mind the client and the victim
18 rather than the independent ideas of who wins on one side or
19 another.

20 Isn't that what law and justice should be about is
21 looking after the client and looking after all of these folks
22 that hire us and that they're responsible -- that the
23 defendants are responsible for, too?

24 I believe it is, and this is something I'm proud of
25 and I think it'll be -- I think it'll be an example in all

1 large cases in the future. And maybe we'll have another one
2 together that we can resolve.

3 But at this point, this is a good settlement. It's
4 got a good notice provision in it. The lawyers have worked
5 long and hard on this. The regulators have worked long and
6 hard on their part of this. And we ask that you give
7 preliminary approval so that we can start the notice process.

8 Thank you, Your Honor.

9 THE COURT: Thank you, Governor Barnes.

10 Let's take a ten-minute break, and then my plan is
11 to hear from Equifax, hear from the FTC and any of the other
12 regulators, and go from there. So we'll be in recess for ten
13 minutes.

14 (Recess taken from 12:17 p.m. until 12:34 p.m.)

15 THE COURT: Mr. Balser.

16 MR. BALSER: Thank you, Your Honor.

17 Equifax is very pleased to have reached the global
18 settlement that has been announced today. We always desired
19 and contemplated the global resolution. And as Governor
20 Barnes indicated, the process by which we were able to
21 achieve this was a long one and an arduous one.

22 To be clear, we have been in negotiations with
23 Plaintiffs, as they've indicated, since almost the very
24 beginning, back in November of 2017.

25 We've also been involved in extensive negotiations

1 with the regulators for an extended period of time. And
2 those negotiations have overlapped, although were separate
3 from the negotiations that were occurring with Plaintiffs.

4 So this has been a very difficult set of jets to
5 land on the aircraft carrier at the same time, and it did
6 take a tremendous amount of work and cooperation among all
7 the parties that are involved.

8 The Plaintiffs have been very worthy adversaries.
9 They are fierce advocates. They are strong advocates for the
10 positions of their clients. But I would echo the remarks
11 that were made: that they have done their job in a
12 professional way.

13 We haven't agreed on much, and it took a long time
14 to get this thing over the goal line; but always were our
15 dealings with them professional, cordial and, I think, an
16 example of what you would hope negotiations in high-stake
17 litigation matters would be.

18 Just to give the Court a little bit of perspective
19 on what we're talking about here, of course, we've got before
20 Your Honor this motion for approval of a notice plan, and
21 this is a settlement that does resolve the Consumer Class
22 claims.

23 In addition, today the CFPB and the FTC have filed
24 Complaints and consent orders in the federal district court
25 here. They have designated those Complaints as being related

1 to the MDL. We would expect that those Complaints will be
2 routed to Your Honor, those consent orders will be before
3 Your Honor. And we have agreed to the terms that are in
4 those consent orders and are ready for the Court's approval
5 upon your review.

6 The fact that those Complaints are in the queue
7 doesn't in any way affect, in our view, the ability of the
8 Court to enter an order preliminarily approving the notice
9 plan, should the Court desire to do so today.

10 One of the things that has been so difficult is
11 that while there is overlapping relief contained in the
12 consent orders that are being filed, there's also additional
13 relief that the regulators negotiated with Equifax, and that
14 is what made these negotiations so difficult. We had to make
15 sure that the orders that we were negotiating with the CFPB,
16 the MSAG Group and the FTC harmonized with the terms of the
17 settlement that has been presented to Your Honor, and they
18 do.

19 And there's been transparency now on both sides.
20 So the Plaintiffs' counsel have seen the terms of the consent
21 orders, and the regulators had transparency into both the
22 term sheet and the final settlement agreement that has been
23 entered into with the Plaintiffs.

24 So in addition to our resolution today with the
25 Plaintiffs, CFPB and FTC, we have also announced settlement

1 with the New York Department of Financial Services, and we
2 have reached agreements, which will be reflected in
3 Complaints and consent orders, with 48 states and the
4 Commonwealth of Puerto Rico and the District of Columbia.

5 So I don't think any of those Complaints will be
6 before Your Honor -- none of them will be. They will all be
7 filed in state courts. But just so that Your Honor knows --

8 THE COURT: I'll take credit for them, anyway.

9 (Courtroom laughter.)

10 MR. BALSER: Please. It was your leadership, Your
11 Honor, that led to our ability to do that.

12 So the point is to achieve a global settlement with
13 this many stakeholders, with this many different agencies and
14 able counsel looking out for the interests of their
15 respective organizations, and for us to have to harmonize,
16 negotiate and defend the company as best we could, it's been
17 a very long, hard, difficult process, and we are very pleased
18 that we have achieved what we've been able to achieve and
19 present for Your Honor's approval the Plaintiffs' motion that
20 reflects the Settlement Agreement that we've negotiated.

21 THE COURT: Thank you, Mr. Balser.

22 Mr. Desai, do you want to speak on behalf of the
23 CFPB or the FTC?

24 MR. DESAI: Thank you, Your Honor. Just briefly on
25 behalf of the bureau, I'll note again that we have filed a

1 Complaint and proposed stipulated order this morning. As
2 defense counsel noted, we're waiting for these items to be
3 routed to Your Honor; and once they are, we plan to file an
4 unopposed motion for entry of the proposed stipulated order
5 along with pro hac applications for each of the enforcement
6 attorneys for the bureau who are participating by telephone.

7 And, Your Honor, respectfully, if I may, I would
8 like to defer the rest of my comments to the attorneys on
9 behalf of the bureau who are appearing telephonically at this
10 time.

11 THE COURT: That's fine.

12 MR. DESAI: Thank you.

13 THE COURT: So --

14 MS. DENNIS: Good afternoon --

15 THE COURT: -- please begin by giving your name and
16 the party you are representing.

17 MS. DENNIS: Good afternoon, Your Honor. Jenelle
18 Dennis on behalf of the Bureau of Consumer Financial
19 Protection.

20 As counsel has indicated, the agencies have
21 negotiated orders with Equifax that are consistent with the
22 relief that would be provided for in the class settlement,
23 both with respect to the relief available to consumers and as
24 well as the administration of that relief.

25 In our view, those orders can and should be entered

1 without delay, those orders being the age of the federal
2 regulator's order, the account for the process of notice and
3 consideration of final approval that will occur in the class
4 action if preliminary approval is granted.

5 We can assure Your Honor that the agencies were not
6 bystanders or observers in this process of reaching a
7 negotiated global resolution. Both agencies were actively
8 investigating Equifax since the breach was announced, and
9 both were also active participants in the negotiations that
10 led to today, in particular in negotiating the relief
11 available to consumers under the federal regulator orders,
12 the information security measures that Equifax will be
13 obligated to undertake, as well as the civil money penalty of
14 \$100 million reflected in the CFPB's orders.

15 As Mr. Desai noted, the bureau filed its Complaint
16 this morning and a proposed stipulated order, and will in
17 short order file an unopposed motion for entry of stipulated
18 order.

19 As I mentioned, the parties have worked very hard
20 to ensure that none of our orders are in tension with one
21 another. However, there are a number of provisions in the
22 bureau's order which constitute unique relief under the
23 agency's authority, such as the civil money penalties, our
24 SCAFLA provisions, our recordkeeping and compliance reporting
25 requirements.

1 We look forward to presenting Your Honor with that
2 motion shortly and answering any questions that the Court may
3 have about it. And we would urge the Court to enter the
4 bureau's order quickly and without delay so that the
5 provisions are not delayed.

6 In sum, the bureau's position is that the relief
7 reflected in this order, again, is consistent with the class
8 action resolution and with the FTC's order and reflects an
9 appropriate resolution that is in the best interest of
10 consumers affected by the Equifax breach.

11 THE COURT: Thank you.

12 Are there any of the other regulators or regulator
13 counsel that want to be heard?

14 MS. CONNOR: Yes, Your Honor. Good afternoon. My
15 name is Jacqueline Connor, and I'm here on behalf of the
16 Federal Trade Commission. Thank you for the opportunity to
17 speak today.

18 The FTC is the primary civil law enforcement agency
19 that protects the data security and privacy interests of
20 American consumers. We started investigating the Equifax
21 data breach in September of 2017, and over the last almost
22 two years we have worked closely with other federal and state
23 regulators.

24 It is rare for the FTC to participate in a class
25 action, but we believe that it was important to do so in this

1 case because we believe that such a global resolution will
2 provide the most comprehensive and rigorous relief to all
3 consumers.

4 As class counsel and counsel for the Equifax have
5 stated, the FTC and the CFBP have been involved in developing
6 the notice and claims process, and the FTC has provided input
7 based on our experience in communicating with and providing
8 redress to American consumers.

9 I understand that you have not seen the FTC consent
10 order yet, but I would like to highlight two things for Your
11 Honor.

12 First, based on the extensive investigation we
13 undertook and based on our experience, the FTC having brought
14 more than 60 data security cases, we believe that the
15 injunctive provisions in our order focusing on data security
16 are vital to protecting the personal information Equifax
17 collects from consumers; and,

18 Second, the consumer relief as written in our order
19 is written in a way that Equifax can satisfy these provisions
20 through the Consumer Class action. As Ms. Dennis for the
21 CFPB said, we do not believe that there is any tension
22 between the federal regulator orders and the Consumer Class
23 action settlement.

24 And, again, we believe that it is crucial that
25 consumers only have one place to go to to get relief.

1 The FTC has written the order, however, in such a
2 way that it is meant to be independent from final approval of
3 the class.

4 I echo Ms. Dennis' request that our orders be
5 granted and entered as expeditiously as possible so that the
6 injunctive relief, particularly the data security
7 protections, can go into effect as soon as possible.

8 THE COURT: Does anyone else want to be heard?

9 (No response.)

10 THE COURT: All right. Then, pursuant to
11 Rule 23(e)(1)(B), I'm going to preliminarily approve the
12 proposed class action settlement and order notice to be given
13 to the class members, and I'm going to grant the Plaintiffs'
14 motion to direct notice of the proposed settlement to the
15 class members. I do so upon the express finding that I am
16 likely to be able to approve the proposed settlement under
17 Rule 23(e)(2) and certify the class for purposes of judgment
18 on the proposed settlement. Considering the factors set
19 forth in Rule 23(e)(2), I think, as I said, approval of the
20 settlement is likely.

21 Second, I approve the proposed notice plan that is
22 set forth in the Plaintiffs' motion, and I approve the
23 settlement administration process proposed by the Plaintiffs.

24 As a footnote, I notice that we learned our lesson
25 in Home Depot and put a page limit on objections, which I

1 think was a good idea and shows we've learned things over the
2 years through this process.

3 So there's some dates that I need to establish
4 before entering the order. So the first of those is the date
5 of the final approval hearing.

6 I believe that the Plaintiffs are proposing no
7 earlier than 150 days after today, from today.

8 MR. SIEGEL: That's right, Your Honor. So that
9 would be -- December 19th would be the first available date.

10 THE COURT: So that's fine with me. That's a
11 little close to Christmas and holiday travel. I'm fine with
12 taking it over to early January. But if that's the date you
13 want, Mr. Siegel --

14 MR. SIEGEL: We've given up our holidays for this
15 case, Your Honor.

16 I think in terms of trying to deliver class relief
17 as quickly as possible, we'll take the first date that the
18 Court has available and adapt our schedules accordingly. If
19 that's December 19th, I think we will eagerly take it.

20 THE COURT: Is that a weekday?

21 THE COURTROOM DEPUTY: Yes, a Thursday.

22 THE COURT: December 19th, 2019. 10:00 a.m., 11:00
23 a.m.? What's your pleasure, Mr. Siegel?

24 MR. CANFIELD: 10:00.

25 MR. SIEGEL: 10:00 is fine, Your Honor.

1 THE COURT: 10:00 a.m.

2 Okay. Next, in paragraph 15 of your proposed order
3 is the opt-out deadline.

4 MR. SIEGEL: Yes, Your Honor. Actually, if I can
5 approach, Your Honor, the dates on that last slide that I
6 think are on the screen should match up, and we've confirmed
7 these dates with Defendant's counsel.

8 So the objection and opt-out deadline would be
9 November 19th, 2019.

10 THE COURT: November 19, 2019.

11 MR. SIEGEL: Yes, Your Honor.

12 THE COURT: Are those all the dates?

13 MR. SIEGEL: They are. There's a schedule on the
14 last page of the notice order, which we can populate for the
15 Court, but that sets the CAFA deadline, the notice date. All
16 the other dates should match up with what's on the screen,
17 Your Honor.

18 The only other date that is not -- that is
19 triggered by the final approval date is the deadline for us
20 to file a final approval motion. That would be 14 days
21 prior. So December 5th, 2019, would be the date we would
22 submit our final approval motion.

23 THE COURT: All right. Well, what I suggest, Mr.
24 Siegel, is you fill in these dates --

25 MR. SIEGEL: We will.

1 THE COURT: -- and submit a clean typewritten order
2 to me today, and I'll be glad to sign it.

3 MR. SIEGEL: Perfect. We'll do it.

4 THE COURT: At another time, I may have some
5 additional comments, but I don't think those would be
6 appropriate today.

7 Because of the new Rule 23 amendments that went
8 into effect, I may try to issue a written order. But I'm
9 preliminarily approving the settlement, preliminarily, and
10 granting the Plaintiffs' motion, whether I issue a written
11 order or not.

12 My criminal docket is a train wreck right now, and
13 that just may not be possible. So --

14 MR. SIEGEL: Understood, Your Honor. Thank you.
15 We will get you this order. And we appreciate the Court
16 accommodating us on short notice.

17 THE COURT: All right.

18 Does that do what we need to do today?

19 MR. CANFIELD: It does, Your Honor.

20 MR. BALSER: Yes, Your Honor.

21 THE COURT: All right.

22 Thank you very much. And Court's in recess until
23 further order.

24 (Proceedings concluded at 12:54 p.m.)

25 - - - - -

Reporter's Certification

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: July 26, 2019

s/Diane Peede, RMR, CRR, CRC
Official Court Reporter
United States District Court
Northern District of Georgia